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# The Cowboy and the Cop: The Saga of Dudley Hiibel, 9/11, and the Vanishing Fourth Amendment

Arnold H. Loewy\*

## I. Introduction

Americans have had a longstanding traditional right to anonymity. The anonymous pamphleteer, for example, in addition to being a part of folklore, is engaged in a constitutionally protected activity.<sup>1</sup> The right to wander aimlessly in the nighttime is also constitutionally protected.<sup>2</sup> And, prior to June 21, 2004, the Supreme Court had never so much as hinted that the state could punish a person for refusal to identify himself in the absence of probable cause to arrest.<sup>3</sup> In *Hiibel v. Sixth Judicial Court*,<sup>4</sup> however, the Court held that a rural rancher/cowboy, lawfully parked by the side of the road, could be deemed a criminal simply for refusing to identify himself to a police officer, notwithstanding that he was guilty of no other crime.

In this essay, I shall explore how we came to reach such a legal climate; and, in the course thereof, ultimately focus on whether Dudley Hiibel was a victim of 9/11. And, if he was, are we all less free because of it? I will begin this essay by examining the circumstances surrounding Mr. Hiibel's confrontation with the Nevada police. Next, I will suggest a hypothetical dissenting opinion that should have been written in this case. Then, I will discuss the potential ramifications of the case on the citizenry. Finally, I will conclude with Dudley Hiibel's poignant comments about his case, which, I regret to say, were more

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1. See, e.g., *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960).

2. See *Papachristou v. Jacksonville*, 405 U.S. 156 (1972).

3. Even then, it is not clear that one could be punished for failure to identify himself, but *Pennsylvania v. Muniz*, 496 U.S. 582 (1990), certainly suggests as much.

4. 124 S.Ct. 2451 (2004).

prescient than those of the five Justices that voted to uphold his conviction.

## II. What Happened

For Deputy Sheriff Lee Dove, the encounter began with a phone call from a known and reliable source. A man identified as Mr. Riddley had called to tell the police that he had seen a man and woman driving in a red and silver GM pickup truck on Grass Valley Road. The couple had been arguing, and the man, who was wearing a black cowboy hat, had hit the woman. Deputy Dove drove to the scene and spoke to Mr. Riddley, who confirmed his report. Deputy Dove then followed Grass Valley Road and saw a red and silver GM pickup truck parked by the side of the road. A woman was sitting in the passenger seat, and a man wearing a black cowboy hat was standing by the passenger side door smoking a cigarette. Deputy Dove stepped out of his car to investigate.

As far as Dudley Hiibel knew, the officer striding towards him was on routine patrol, perhaps concerned that his truck was parked too closely to the road. At the same time that Deputy Dove had been talking to Mr. Riddley, Hiibel and his daughter had been driving down the road arguing about a boy in town. Mr. Hiibel didn't like the boy, but his daughter Mimi had been seeing him against her father's wishes. Tempers were high and at one point Mimi, while driving the truck, struck her father on the shoulder out of frustration. Hiibel asked his daughter to pull the truck over. Once they were parked, he got out and lit up a cigarette to calm his nerves. He began speaking to his daughter again, when they were interrupted by the wail of a police siren. Unaware of the officer's purpose, and still concerned about his daughter in the truck, Dudley Hiibel cautiously greeted the officer walking towards him.

Fortunately, Deputy Dove's squad car was equipped with a video camera that captured the confrontation between Hiibel and Dove, and recorded Hiibel's ultimate arrest.<sup>5</sup> Because of the great importance of understanding exactly what happened on the fateful day, I am reproducing the entire transcript. At several points the conversation became garbled, and in the interest of strict accuracy and maintaining the flow of the transcript, those garbled parts of the conversation have been included and indicated either with a blank space or a dotted line.

Hiibel: How's it goin' Sheriff

Dove: How ya doin'?

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5. The video itself, as well as the transcript that follows, is available at <http://papersplease.org/hiibel/video.html> (last visited Feb. 15, 2005).

Dove: Well, . . . . .

H: Looks like I'm parked ok

D: Well, I've got a report that there's been a fightin' going on between you two tonight.

H: I don't know nuttin' about that. ——— Of course, I've ———  
—————

D: Why don't you come over here, ok?

H: I'm parked alright on the side of the road

D: You've got any identification on you?

H: No, ————— why should I have an ID? Why do you want me to . . .

D: The thing is this ——— we're doin' an investigation, ok and I wanna see some identification

H: Naw, I'm ——— gonna ———

D: I need to see some identification

H: I don't, I don't think, I think I've —————

D: Come over here. Sir . . .

H: Sir, don't grab onto me

D: I won't grab you if you'll come back over here

H: ——— sorry —————

D: Come back over here, ok

H: Why in hell do I go over here? Why? Am I under arrest?

D: I just need to see some identification.

H: Why?

D: Because I'm investigating an investigation

H: Investigating what?

D: I'm investigating

H: I'm a legal

D:

H: I'm illegally parked, I mean, I mean I am illegally parked?

D: How'd you get home yesterday

H: That don't matter

D: \_\_\_\_\_

H: \_\_\_\_\_

D: It could be a searchable situation

H: Ok, take me to jail.

D: I didn't say that

H: Alright then I'm not illegally parked

D: ok

H: I know what, I know what I'm talking to

D:

H: I know what you ——— type ———

D: ——— registration ———

H: Why?

D: Because I wanna find out who you are and I wanna find out what I've got going on here

H: \_\_\_\_\_

D: So, you're refusing to \_\_\_\_\_

H: \_\_\_\_\_

D: \_\_\_\_\_

H: \_\_\_\_\_

D: Show me your identification. . . .

H: Why?

D: and uh, uh fine. Show me your identification.

H: I'm uh, I'm uh, I'm being cooperative with you. I'm . . .

D: Show me your ID

H: I'm, I'm cooperating with you

D: Show me your ID

H: If you've got something take me to jail

D: Show me your ID

H: \_\_\_\_\_

D: \_\_\_\_\_

H:

D: . . . and then we'll talk, ok?

H: I don't want to talk. I've done nothing.' I've broken no laws.  
Take me to jail, I don't care.

D: Why would I, why would I take you to jail if you've broken no laws?

H: Because you wanna apparently. I'm not illegally parked, I'm not

doin' nothing.' I've got a guy behind me who wants to take me to jail.

D: I want to see some ID, ok.

H: Why?

D: Because

H: Why

D: \_\_\_\_\_

H: \_\_\_\_\_

D: \_\_\_\_\_

H: I don't care

D: You're not going to cooperate?

H: Because I . . .

D: So then you're not gonna cooperate with me at all? Ok, turn around and put your hands on your back. Spread your feet.

Mimi: Nooo more!

D: Spread your feet, spread your feet,

M: No more!

D: Spread your feet wider, thank you sir.

M: Aaaahhhh

D: Ok, I'm going to tilt you back in a second. Do you got any ——— or stick that will hurt me?

H: I . . .

D: I'm gonna take your knife and you'll get it back at a later time, now.

D: Ok, ————— back here.

M: Aaahhhh.

Radio: —————

M: Aaahhhhhh

(Sirens)

M: Aaahhhhh! Get off of me! Get off of me!

H: Big man, big man, real big man!

Radio: —————

M: Aaahhh!

H: Big man, gee what a big man!

M: Stop!

H: I can't, I've never seen such a big man since you guys.

M: Get off of me! Get off of me!

M: Get off of me!

H: Oh, yes. Big men. Big men, I've never seen such big men since you guys.

M: Stop! Stop!

H: Big men!

M: Why are you doing this to me?

H: Big men, big men.

M: (expletive)

D: (to Mimi) Can you explain to me what happened tonight?



M: I told you. We got in a fight (. . . . .) and I told ya what we we were arguing about because we were fightin.’

D: You feel like standin’ up?

M: I feel like you getting this thing off of me

D: Can I help you stand up so then we can talk? Maybe we can take those off.

M: Come on . . .

D: Wanna stand up?

D: What’s you’re name?

H: Big man

D: What’s your name?

M. Mimi.

D: Mimi what?

M: Hiibel<sup>6</sup>

Faced with the specter of a routine investigation gone wrong because a recalcitrant suspect refused to provide his papers to a belligerent officer, one might have expected the Supreme Court to give careful consideration to the factual nuances of the case. Unfortunately, that was not to be. Justice Kennedy, for a 5-4 majority, focused only on Hiibel’s refusal to provide identification, evidently believing that Dove’s refusal to answer Hiibel’s questions was immaterial to the case.

### III. Hypothetical Dissenting Opinion<sup>7</sup>

#### A

The Court holds: “[A]n officer may not arrest a suspect for failure

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6. Video Tape Transcript, at <http://papersplease.org/hiibel/video.html> (last visited Feb. 15, 2005) (the transcript has been reproduced in this essay exactly as it appears on the website).

7. Both Justices Stevens and Breyer wrote dissenting opinions. Neither, to my mind, captures the magnitude of the harm done by the Court.

to identify himself if the identification request is not reasonably related to the circumstances justifying the stop.”<sup>8</sup> I agree. The Court goes on to hold: “It is clear in this case that the request for identification was ‘reasonably related in scope to the circumstances which justified’ the stop.”<sup>9</sup> It is difficult to believe that the Court finds clarity for its conclusion in the transcript that I read and watched on videotape, but it must because that is the only one before the Court.

There undoubtedly are cases where obtaining the identity of a suspect would be relevant to dispelling or confirming a suspicion. For example, if a woman calls the police to say: “There is a man lurking in the bushes near my apartment. I’m afraid it’s my ex-boyfriend, Albert Jones. I have a restraining order against him. I can’t go out and look. He might kill me.” Under those circumstances, ascertaining the man’s name would be reasonably related to dispelling or confirming suspicion. Similarly, if a man is lurking outside of a schoolyard, ascertaining the man’s name to check against sex offender lists would be reasonably related to dispelling suspicion. In cases like the ones just hypothesized, I am willing to assume *arguendo* that there would be no Fourth Amendment objection to arresting someone for failure to respond to an *appropriately-explained* request for identification.<sup>10</sup>

In this case, the reasonable suspicion was predicated upon an alleged assault on a female. Having found Hiibel by the side of the road and a young woman in the truck, one would have thought that the first step would be to ascertain the well-being of the female, not the name of the male. He could have observed the female to see if she had any injuries. He could have asked her if she had been attacked, and if either her affirmative response or the manner of her negative response led Deputy Dove to believe that she had been assaulted, he could have arrested her father. Had the officer done that, he would have learned that young Mimi Hiibel had not been assaulted and the whole matter would have been resolved.<sup>11</sup>

Proper police citizen interaction is important. A brief detention on the basis of reasonable suspicion is an exception to the general rule of probable cause that we approved in *Terry v. Ohio*.<sup>12</sup> We have always insisted, however, that the detention be no more intrusive than

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8. *Hiibel*, 124 S.Ct. at 2454.

9. *Id.* at 2460.

10. See *infra* part B of this opinion.

11. In fact, they were arguing about a boy that Mimi’s father disapproved of her seeing, and it was Mimi who had hit her father. Her father then asked her to pull over so that they could cool off. See *supra* Part II of this article.

12. 392 U.S. 1 (1968).

necessary.<sup>13</sup> Besides being counter-productive to ascertaining the well-being of Mimi Hiibel, Officer Dove's demand for identification surely intruded on Dudley Hiibel's sense of security, privacy, and personal autonomy far more than any good that the deputy might have hoped to attain.

## B

Even if one were to assume that the Court were correct in concluding that this was an appropriate case to require identification, it is essential that the police be required to explain to the suspect why he must give that identification. Otherwise, the right of one *not* under reasonable suspicion to withhold identification, clearly established by this Court's decision in *Brown v. Texas*,<sup>14</sup> will be eviscerated. This right will be eviscerated because a person not under reasonable suspicion who is asked for identification will have to give it or risk arrest because, unbeknownst to him, in his total innocence, the police had what amounted to reasonable suspicion.<sup>15</sup>

The case at bar is a case in point. Dudley Hiibel had no idea that an apparently reliable citizen mistakenly thought he saw Hiibel assaulting his daughter. Consequently, Hiibel had no idea why Deputy Dove wanted his identification. Although Dove did mention the report of a fight between Hiibel and his daughter at the outset of the interview, he never explained that he was investigating it as an assault. Indeed, it was apparent throughout the interview that Hiibel thought that the entire encounter was about illegal parking.

The Court emphasizes that Deputy Dove repeatedly asked Hiibel for identification and suggests that Hiibel taunted the officer by asking to be arrested. The Court does not mention that Hiibel repeatedly asked the deputy why he wanted his license. Deputy Dove was repeatedly non-responsive or evasive in his answers. Once he even said simply "because" in response to Hiibel's "why" question. Little children frequently do that at play. One might have expected a more mature response from an officer of the law, supposedly entrusted with guarding our cherished freedoms.

In the future, when a policeman asks an innocent citizen for identification, what is she to do? *Brown* clearly holds that she need not identify herself. But Hiibel thought that also. Several times Hiibel told the deputy that he believed that he was cooperating with him. Yet the

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13. See, e.g., *Florida v. Royer*, 460 U.S. 491 (1983).

14. 443 U.S. 47 (1979).

15. See *Kolender v. Lawson*, 461 U.S. 352, 368 (1983) (Brennan, J., concurring).

Court upholds a conviction based on an unexplained request for identification, with no indication at all why the identification was needed. Can any of us confidently refuse a request for identification in the future no matter how innocent we may be? Regrettably, I fear the answer is "no."

### C

Even if Deputy Dove did have the power to demand identification, there is a disconnect between the Court's theory of the case and the State's theory of the arrest. The Court clearly holds (as it must if it is to remain true to *Kolender v. Lawson*)<sup>16</sup> that no particular form of identification (such as a driver's license) need be shown. It is enough that the suspect simply tell the officer what his name is. Yet it is clear that Hiibel was arrested because he did not *show* Deputy Dove any identification.

The first time Deputy Dove asked Hiibel if he had any identification on him, Hiibel said: "No. Why should I have an ID?"<sup>17</sup> Had deputy Dove simply said: "That's ok. Just tell me who you are," it is at least plausible that the confrontation would not have escalated. Indeed, for all we know Hiibel might have been prepared to go to jail because he thought that he was going to be arrested for not having identification with him.

The Court (I hope) is not holding that every American must carry an identification card with him lest the police need it should he be in a situation in which reasonable suspicion may arise. But, if the officer is free to ask for ID, not tell the suspect that formal ID isn't necessary, and then arrest the suspect for not identifying himself, the result is the same.

### D

The conviction that we uphold today is predicated upon several layers of erroneous assumptions. Obtaining Dudley Hiibel's identity was not necessary or even helpful in assessing the accuracy of the reasonable suspicion. Furthermore by not informing him of the crime being investigated, he was deprived of the opportunity to intelligently decide whether to be more forthcoming. Finally, Hiibel was never told (probably because it wasn't true) that the police would be satisfied if he would simply tell them who he was.

More than half a century ago, Justice Jackson, upon his return from

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16. *See id.*

17. For a full record of their conversation, *see supra* Part II of this article.

Nuremberg, criticized his colleagues for treating the rights under the Fourth Amendment as second class rights. As he put it: "Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government."<sup>18</sup> We ignore that lesson today. And, what is sadder, we ignore it in a case where the Government's need to stretch the Constitution was at its absolute nadir.

I dissent.

#### IV. Ramifications of the Case

In deciding *Hiibel*, the Supreme Court made no reference to 9/11. The Nevada Supreme Court in reaching the same conclusion, however, was not so subtle. As that court put it:

Most importantly, we are at war against enemies who operate with concealed identities and the dangers we face as a nation are unparalleled. Terrorism is "changing the way we live and the way we act and the way we think." During the recent past, this country suffered the tragic deaths of more than 3,000 unsuspecting men, women, and children at the hands of terrorists; seventeen innocent people in six different states were randomly gunned down by snipers; and our citizens have suffered illness and death from exposure to mail contaminated with Anthrax. We have also seen high school students transport guns to school and randomly gun down their fellow classmates and teachers. It cannot be stressed enough: "This is a different kind of war that requires a different type of approach and a different type of mentality."<sup>19</sup> To deny officers the ability to request identification from suspicious persons creates a situation where an officer could approach a wanted terrorist or sniper but be unable to identify him or her if the person's behavior doesn't rise to the level of probable cause necessary for an arrest.<sup>20</sup>

Although a tad more subtle, the United States Supreme Court view of the case is no less deadly to personal security. The Court, despite saying that the request for identification must be reasonably related to the stop, left little doubt there would never (or hardly ever) be a case involving reasonable suspicion in which identification would not be required. The Court even appeared to include *all* domestic disputes as

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18. *Brinegar v. United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting).

19. *Hiibel v. Sixth Jud. Dist. Ct.*, 59 P. 3d 1201, 1206 (Nev. 2002), *aff'd* 124 S.Ct. 2451, 2458 (2004) (quoting President George W. Bush from an address he gave at a news conference October 11, 2001).

20. *Id.*

cases requiring identification, regardless of the circumstances.<sup>21</sup> Indeed, the Court went so far as to say: "Obtaining a suspect's name in the course of a *Terry* stop serves important government interests."<sup>22</sup> The good news, I suppose, is that the Court said "a *Terry* stop," not "*any Terry* stop." However, in light of the *Hiibel* facts, it is difficult to imagine a case of reasonable suspicion in which identification would *not* be required.

Furthermore, if the need for identification is as strong as the U.S. and Nevada Supreme Courts suggest, why wouldn't there be a need for *reliable* identification; a position specifically rejected by *Kolender v. Lawson*?<sup>23</sup> Suppose, for example, the police see a suspicious looking person of apparent Middle Eastern descent carefully surveying a shopping mall as if he is planning to blow it up. Assume that a policeman stops him, frisks him and finds no weapons. They then enter into the following dialogue:

Policeman: Could you identify yourself please?

Suspect: Yes, I'm Bill Jones

Policeman: May I see some identification please?

Suspect: No, I choose not to share that with you.

Does anybody truly believe that the suspect's negative response would be the end of the encounter? Indeed, if Dudley Hiibel had simply said: "My name is Dudley Hiibel," do we really believe that Deputy Dove would have said: "Thank you very much" and left?

What is perhaps most disturbing about *Hiibel*, particularly from the insights gained by watching the videotape of the incident,<sup>24</sup> is that the case is more about police power than it is about victim or community safety. In that regard, it is first cousin to *Atwater v. Lago Vista*,<sup>25</sup> a case decided just a few months before 9/11. In that case, Bart Turek, a policeman who pretended to be concerned with the safety of Atwater's unbelted children, arrested their mother, denied her the opportunity to

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21. See *Hiibel v. Sixth Jud. Ct.*, 124 S.Ct. 2451, 2458 (2004) (stating: "Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.").

22. *Id.*

23. See 461 U.S. 352 (1983) (striking down ordinance that required persons to provide "credible and reliable" identification to police on demand).

24. See Video Tape Transcript, *supra* note 5.

25. 532 U.S. 318 (2001). Cf. Arnold H. Loewy, *Cops, Cars, and Citizens: Fixing the Broken Balance*, 76 ST. JOHN'S L. REV. 535, 559-564 (2001).

make arrangements for her children, and drove Atwater to the police station in handcuffs and without fastening her seatbelt in the police car.<sup>26</sup>

Similarly, in *Hiibel*, Lee Dove, supposedly concerned with the safety of young Mimi Hiibel, arrested her father despite her protests to stop. When Mimi exited the truck to try to assist her father, she was thrown to the ground, face first, and handcuffed by one of deputy Dove's colleagues. The panic that this caused her literally turned her into a screaming Mimi. Meanwhile, her handcuffed father could do nothing more than sarcastically refer to the bullying police as "Big men."

Despite the similarities of *Atwater* and *Hiibel*, there was one substantial difference. *Atwater* came with an impressive historical pedigree that was lacking in *Hiibel*. Indeed, the *Atwater* Court recognized that it was performing an injustice on the facts of the case before it. That Court believed, however, that the importance of a clear rule allowing the police to arrest for a minor crime committed in their presence was important enough to allow an injustice on the peculiar facts of the case.

The procedure in *Hiibel* has no similar pedigree. Indeed, prior to *Terry*<sup>27</sup> in 1968, the police could stop somebody only on probable cause. Each incremental intrusion since *Terry* has been grudgingly granted only when necessity could be shown.<sup>28</sup> Consequently, stop and frisk cases have classically been judged by standards as opposed to rules.<sup>29</sup> Therefore, the Court should have taken seriously its admonition to ensure that the request for identification is reasonably related to the circumstances justifying the stop.

The Court did not do that in *Hiibel*. Instead, it decided that identification is reasonably related to a *Terry* stop, and that in domestic disputes, the identity of the suspect is important. Consequently, it did not need to ask whether the special facts and circumstances of this case rendered identity essential, or even helpful. If the Court had not been so anxious to lay down a general rule in a case where one is not appropriate, it might have come up with the correct result.

To what extent is *Hiibel* the product of 9/11? Obviously *Atwater* preceded 9/11, so one cannot categorically say *Hiibel* wouldn't have happened without the events of 9/11. But *Atwater* was historically explicable, and both *Brown v. Texas*<sup>30</sup> and *Kolender v. Lawson*<sup>31</sup> strongly

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26. *Atwater*, 532 U.S. at 369 (O'Connor, J., dissenting).

27. 392 U.S. 1 (1968).

28. See, e.g., *Florida v. Royer*, 460 U.S. 491 (1983).

29. See generally Kathleen Sullivan, *The Justices of Rules and Standards*, 106 HARV. L. REV. 22 (1992).

30. 443 U.S. 47 (1979).

31. 461 U.S. 352 (1983).

counsel against the *Hiibel* result. To the extent that 9/11 did give us *Hiibel*, it seems trite but fair to say: “Chalk up one more win for the terrorists.”

#### V. Hiibel in His Own Words

I conclude this essay with an editorial by Dudley Hiibel from the Los Angeles Times:

A lot of people want to know why I went all the way to the Supreme Court rather than give my name to a policeman. “What’s so important about that?” they ask. “What’s the big principle at stake?” And last week, when the Supreme Court ruled against me, maybe some thought I was foolish to have done it. But I still think I did the right thing and that there were some issues that had to be decided.

The story began on May 21, 2000, when I was on a rural road near my ranch in Winnemucca, Nev. My daughter and I had gotten into an argument. She was driving, and I was the passenger. We stopped by the side of the road, parked legally, and we continued our argument. I figured we would finish it out and then cool off for a moment.

That’s when I heard sirens, and all of a sudden a police car drove up. A deputy walked up to me and demanded my “papers.” I asked him what the problem was. “Why do you guys have me surrounded?” I asked, because by now there were two or three more police cars. He refused to explain why he was there or why he wanted my papers. Eleven times he demanded my identification. I refused to give it to him each time, and he finally handcuffed me and took me to jail. The cops threw my daughter on the ground, cuffed her hands behind her and demanded her name as well, but by that time I was on my way to the county jail. I got there at midafternoon and stayed overnight.

I hadn’t been argumentative; I wasn’t picking a fight. Basically, when Deputy Dove demanded my papers—and he didn’t ask for them, he demanded them—I didn’t say, “Hey cop, I’m not going to give you nothing.” I just asked why he wanted them. “What have I done?” I asked. If he’d explained what he was doing there, perhaps it could have been settled on the spot. But his position was that he wanted the papers first.

Here’s why this was so important to me: I don’t believe that the authorities in the United States of America are supposed to walk up to you and ask for your papers. I thought that wasn’t lawful. Apparently I was wrong, but I thought that that was part of what we



were guaranteed under the Constitution. We're supposed to be free men, able to walk freely in our own country—not hampered, not stopped at checkpoints. That's part of what makes this country different from other places. That's what I was taught.

And it's not just because it's in the Constitution. It's something that you just kind of know. It's kind of obvious. If you haven't committed a crime, you shouldn't be harassed by the police. If they suspect you of something, I don't see why they shouldn't explain it. I wasn't violent. And it was proven later in court that I hadn't committed any crimes.

These days, it's like we're all guilty until proven innocent. You walk into an airport and everybody's a suspect. Like the way people were treated in Soviet Russia, in Red China, in Castro's Cuba.

We don't want the United States to become that.

I don't have a super-clear understanding of the Constitution. I'm not an attorney. I've never even read the whole thing. I only went through eighth grade. But I remember what I learned, and it seems to me that the whole idea of “your-papers-please” goes completely against the grain of the American people.

As I understood it, the state was supposed to serve us—not that we were supposed to serve the state. Laws were supposed to protect the people against the government, not the other way around.

Maybe in Los Angeles and other places across the country, the police have browbeaten the people into more acceptance of this police state mentality than where I am. I live out on a ranch, the nearest town is 30 miles away, and it only has 7,000 or 8,000 people. I think that has an effect on our mentality.

It's not that I'm anti-law enforcement. Criminals should be apprehended. But I don't think we've got to take everybody's rights away just so that we can be safe. If you do that, you've defeated your purpose. I don't think people want to be protected to the extent that they become slaves.

I'm very disappointed by this decision. I think a basic freedom has been lost. What bothers me the most is that my children and grandchildren are going to have to live with this law. It moves us a step closer to control of the people by the government, and I don't

think that's a step forward.<sup>32</sup>

Frankly, I believe that Dudley Hiibel's assessment of the law was superior to that of the five Supreme Court justices that ruled against him. It is sad commentary that a simple rancher/cowboy with an eighth grade education understands the intricacies of the Constitution better than the five elite lawyers that constituted a majority of the Supreme Court that ruled against him. But then again, it may not be intricacies, but simplicities, that Dudley Hiibel understands. Justice Jackson understood them when he returned from Nuremberg.<sup>33</sup> One might hope that one day the current Supreme Court would share that understanding. But frankly, after the election of 2004, I'm afraid that day may be far off.

## VI. Epilogue

Dudley Hiibel was not the only family member called to answer for the incident on Grass Valley Road that fateful day. Mimi was also charged. The alleged victim of her father's assault (and actual victim of the policeman's assault) was charged with resisting arrest. Her father asked one question in court: What charge was his daughter arrested for resisting? Being unable to answer that question, the court dismissed the charge.<sup>34</sup>

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32. Larry Dudley Hiibel, Editorial, *We All Lose If Cops Have All the Power*, L.A. TIMES, June 24, 2004, at B15.

33. See *Brinegar v. United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting).

34. See Official Website of Dudley Hiibel, at <http://www.papersplease.org/hiibel/facts.html> (last visited Feb. 16, 2005).

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